

This letter discusses various exemptions available under the Electricity Excise Tax. See, 35 ILCS 640. (This is a PLR.)

August 2, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter received on June 26, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter you have stated and made inquiry as follows:

BUSINESS and the CORPORATION own, operate, and provide commuter railroad transportation to the AREA. Both entities operate under the service mark of COMPANY ("BUSINESS/COMPANY" and "CORPORATION/COMPANY").

I respectfully request that the Illinois Department of Revenue ("Department") issue a private letter ruling concerning the application of the referenced tax statutes to the BUSINESS and the CORPORATION/COMPANY for all periods which remain open and all prospective periods. There is no audit or litigation pending with the Department on this matter. To the best of my knowledge, neither the BUSINESS nor the CORPORATION/COMPANY have previously submitted the same or a similar issue to the Department that was withdrawn before a letter was issued.

1. Electricity Excise Tax Law, 35 ILCS 640

Under the Electricity Excise Tax Law, 35 ILCS 640/2-4, " ...tax is imposed on the privilege of using in this State electricity purchased for use or consumption and not for resale, **other than by municipal corporations owning and operating a local transportation system for public service,**..." (bolding added for emphasis).

The Regional Transportation Authority ("RTA") "is a... municipal corporation." 70 ILCS 3615/1.04. The BUSINESS is the operating division of the RTA responsible for providing public transportation by commuter rail. 70 ILCS 3615/3B.01. Pursuant to 70 ILCS 3615/2.20 (ii), the Commuter Rail Board continues the separate public corporation, CORPORATION, to operate on behalf of the Commuter Rail Board commuter railroad facilities. All of the Public Transportation Facilities (3615/1.03) owned by the RTA were transferred by quit claim deed and Bill of Sale on December 31, 1984 to the BUSINESS and CORPORATION. In Addition, the CORPORATION has

"the same exemptions, restrictions, and limitations as are provided by law with regard to the Authority..." 70 ILCS 3615/2.20 (a)(xii). The BUSINESS and the CORPORATION own, operate, and provide a regional commuter railroad transportation system for public service. Both entities operate under the service mark of COMPANY. Therefore, the BUSINESS and the CORPORATION/COMPANY fall within the foregoing statutory prerequisites for exempt status.

2. The Public Utilities Revenue Act, 35 ILCS 620 (Electricity Distribution Tax)

Under the Public Utilities Revenues Act, 35 ILCS 620/2a.1, "...there is hereby imposed upon persons engaged in the business of distributing, supplying, furnishing or selling electricity and subject to the tax imposed by this Act (***other than a school district or unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970...***), an additional tax..." (bolding added for emphasis). According to Section 1 of Article VII of the Illinois Constitution of 1970, units of local government means "counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental power or powers in respect to limited governmental subjects, but does not include school districts."

The Regional Transportation Authority 70 ILCS 3615/1.04 provides that the RTA is "...a unit of local government." The BUSINESS is an operating division of the RTA, 70 ILCS 3615/3B. The CORPORATION is a special district, a unit of local government, and has "the same exemptions, restrictions, and limitations as are provided by law with regard to the Authority..." 70 ILCS 3615/2.20 (a)(xii). Therefore, the BUSINESS and the CORPORATION/COMPANY fall within the foregoing statutory requirements for exempt status.

3. Telecommunications Excise Tax Act, 35 ILCS 630

The Telecommunications Excise Tax Act, 35 ILCS 630, imposes a tax on the act or privilege of originating or receiving telecommunications by a person in Illinois.

Section 4.08 of the RTA Act exempts the RTA and the Service Divisions from all state and unit of local government taxes and registration and license fees (other than as required for motor vehicle registration in accordance with the Illinois Vehicle Code). Therefore, the BUSINESS is exempt from the telecommunications excise tax. The CORPORATION/COMPANY is a separate public corporation with "the same exemptions, restrictions, and limitations as are provided by law with regard to the Authority..." 70 ILCS 3615/2.20 (a)(xii). Therefore, CORPORATION/COMPANY is exempt from the telecommunications excise tax.

Therefore, I respectfully request the Illinois Department of Revenue issue a private letter ruling indicating the Commuter Rail Division of the Regional Transportation Authority/COMPANY and the Northeast Illinois Regional Commuter Railroad Corporation/COMPANY are exempt from the following taxes:

1. Electricity Excise Tax pursuant to 35 ILCS 640/2-4,
2. Electricity Distribution Tax pursuant to 25 ILCS 620/2a.1
3. Telecommunications Excise Tax pursuant to 70 ILCS 3615/4.08 and 3615/2.20 (a)(xii).

Section 2-4 of the Electricity Excise Tax Law (35 ILCS 640/2-4) provides that the Electricity Excise Tax is imposed "on the privilege of using in this State electricity purchased for use or consumption and not for resale, *other than by municipal corporations owning and operating a local transportation system for public use ....*" Section 1.04 of the Regional Transportation Authority Act ("the RTA Act") establishes the Authority and states that it "shall be a unit of local government, body politic, political subdivision and municipal corporation." Section 3B.01 specifically establishes the Commuter Rail Division as an operating division in the Authority. See, 70 ILCS 3615/3B.01. While the provisions of Section 2.20 (a)(xii) of the RTA Act establish the CORPORATION as a separate public corporation apart from the Regional Transportation Authority (see the discussion below), it does not appear that BUSINESS is an entity legally separate from the Authority. Assuming that this is the case, we believe that the BUSINESS is a municipal corporation which owns and operates a local transportation system for public use. It is therefore exempt from the Electricity Excise Tax Law under Section 2-4 (a).

We believe that the CORPORATION/COMPANY is also exempt from the Electricity Excise Tax Law, but not because it is a municipal corporation which owns and operates a local transportation system. Section 3B.02 of the RTA Act establishes the Commuter Rail Board as the governing body of the Commuter Rail Division. See, 70 ILCS 3615/3B.02. Section 3615/2.20 (xii) of the RTA Act states that the CORPORATION is a *separate public corporation* which is subject to the supervision and direction of the Commuter Rail Board. It is specifically designated as a "transportation agency " which operates commuter railroad facilities on behalf of the Commuter Rail Board. This section further states that the CORPORATION shall possess "the same exemptions, restrictions and limitations as are provided by law with regard to the Authority ..." Section 4.08 of the RTA Act provides that that Authority is "exempt from all State and unit of local government taxes and registration and license fees ..." See, 70 ILCS 3615/4.08. This being the case, we believe that the CORPORATION/COMPANY is therefore exempt from the Electricity Excise Tax.

Section 2a.1 of the Public Utilities Revenue Act ("PURA") imposes a tax on invested capital and on the distribution of electricity. The tax is imposed upon taxpayers, as defined in Section 1 of the Public Utilities Revenue Act, which includes "an electric cooperative, an electric utility, or an alternative retail electric supplier ... engaged in the business of distributing electricity in this State for use or consumption and not for resale." Section 2a.1(a) of the PURA states that the tax is "imposed upon every taxpayer (other than an electric cooperative, a school district or unit of local government as defined in Section 1 of Article VII of the Illinois Constitution of 1970) ...." See, 35 ILCS 620/2a.1 (a).

We do not find authority to exempt either BUSINESS or CORPORATION/COMPANY from the Electricity Distribution Tax. This tax is imposed upon persons that supply electricity to end users. While the cost of this tax may be passed onto end users of electricity, the legal incidence of the tax falls solely upon persons that are engaged in the business of supplying electricity. The exemptions provided for in Section 2a.1 refer only to electric cooperatives, school districts or units of local

government that act as distributing suppliers of electricity. The provisions of Section 2a.1 do not, as you assert, provide an exemption for end users of electricity who maintain status as a unit of local government. In short, the manner in which the Electricity Distribution Tax is structured imposes no tax upon BUSINESS or CORPORATION/COMPANY from which it could be exempted. Neither does it provide an exemption for distributing suppliers making sales to BUSINESS and CORPORATION/COMPANY.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving interstate or intrastate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer. See, 35 ILCS 630/3 and 630/4. The tax is imposed upon the end users of telecommunications and is collected by "retailers maintaining a place of business in this State."

Your letter is not entirely clear regarding the legal status of BUSINESS. While the provisions of Section 2.20 (a)(xii) of the RTA Act establish the CORPORATION as a separate public corporation apart from the Regional Transportation Authority, it does not appear that BUSINESS is an entity legally separate from the Authority. Assuming that this is the case, we believe that the BUSINESS is exempt from the Telecommunications Excise Tax. The BUSINESS is specifically designated by Section 3B.01 of the RTA Act as an operating division of the Regional Transportation Authority. Under the provisions of Section 4.08 of the RTA Act, the Authority is exempt from " ... all State and unit of local government taxes and registration and license fees ..." Consequently, the BUSINESS, which we have assumed includes the BUSINESS, is exempt from the Telecommunications Excise Tax.

As discussed above, despite its close relationship with the Regional Transportation Authority, Section 2.20 (a)(xii) of the RTA Act establishes the CORPORATION is a separate public corporation, and therefore a separate legal entity from the Regional Transportation Authority. See, 70 ILCS 3615/2.20 (a)(xii). However, under Section 2.20 (a)(xii), the CORPORATION is possessed of "the same exemptions, restrictions and limitations as are provided by law with regard to the Authority ..." As discussed above, Section 4.08 of the RTA Act provides that that Authority is "exempt from all State and unit of local government taxes and registration and license fees ..." See, 70 ILCS 3615/4.08. This being the case, we believe that the CORPORATION/COMPANY is therefore also exempt from the Telecommunications Excise Tax.

I hope that this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions regarding the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Jerilynn Troxell Gorden  
Senior Counsel, Sales & Excise Taxes